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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.				
10/706,421	11/12/2003	Wade Carter	8130 (FSP0445)	6799				
88095 ARRIS 3871 Lakefield Drive Suwanee, GA 30024	7550 03/08/2010		<table border="1"><tr><td>EXAMINER</td></tr><tr><td>TRAN, NGHI V</td></tr></table>		EXAMINER	TRAN, NGHI V		
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			<table border="1"><tr><td>NOTIFICATION DATE</td><td>DELIVERY MODE</td></tr><tr><td>03/08/2010</td><td>ELECTRONIC</td></tr></table>	NOTIFICATION DATE	DELIVERY MODE	03/08/2010	ELECTRONIC	
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03/08/2010	ELECTRONIC							

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mirho@fspllc.com

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/706,421

**Applicant(s)**

CARTER ET AL.

**Examiner**

NGHI V. TRAN

**Art Unit**

2451

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 02 February 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-18, 26 and 27.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/John Follansbee/  
Supervisory Patent Examiner, Art Unit 2451

Continuation of 11. does NOT place the application in condition for allowance because:

In response to the applicant's argument that claims 13-18 clearly meet the structural requirements to be statutory under 35 U.S.C. 101, the examiner respectfully disagrees. Claim 13 would reasonably be interpreted by one of ordinary skill as a system of software per se (software means only and not embedded in a computer readable storage medium), failing to fall within a statutory category of invention. As such, the system of software means alone is not a machine, and it is clearly not a process, manufacture nor composition of matter. Although the claim recites "a system for configuring a first network device in a communication network, comprising: means for setting ...; means for saving ...; means for loading ...; and means for setting .. in the configuration file" the claim actually lacks the necessary physical articles / objects / elements / components / structure / hardware such as memory and a processor to constitute a machine or manufacture within the meaning of 35 USC 101. For example, the specification, at paragraph 0023, means recites "a software means for switching on or off more than one parameter." Therefore, claims 13-18 does not meet the requirements to be statutory under 35 USC 101 as show in the above.

In response to the applicant's argument that the specification, at page 8, lines 12-17, describes "each values representing the at least one subset without including the plurality of individual configuration parameters contained in each selected subset" the examiner respectfully disagrees. The examiner cannot find any support for this limitation, especially at page 8, lines 12-17 of the specification. The examiner considers the "without" as a negative limitation. According to MPEP2173.05 (i), "any negative limitation or exclusionary proviso must have basis in the original disclosure". Since the applicants does not positively describe that each values representing the at least one subset without including the plurality of individual configuration parameters contained in each selected subset. Therefore, the examiner consider the limitation "without including the plurality of individual configuration parameters contained in each selected subset" as a new matter.